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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

5 v.

16 Cr. 370 (CM)

6 MATTHEW CONNOLLY,  
7 GAVIN CAMPBELL BLACK,

8 Defendants.

Conference

9 -----x

10 New York, N.Y.  
11 May 22, 2018  
12 10:17 a.m.

13 Before:

14 HON. COLLEEN McMAHON,

15 District Judge

16 APPEARANCES

17 U.S. DEPARTMENT OF JUSTICE  
18 CRIMINAL DIVISION, FRAUD SECTION

19 BY: CAROL L. SIPPERLY  
20 MICHAEL T. KOENIG  
21 ALISON L. ANDERSON  
22 MARK JOHN CIPOLLETTI  
23 CHRISTINA BROWN  
24 Trial Attorneys

25 PAUL HASTINGS LLP  
Attorneys for Defendant Matthew Connolly  
BY: KENNETH M. BREEN, ESQ.  
PHARA A. GUBERMAN, ESQ.  
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LEVINE LEE LLP  
Attorneys for Defendant Gavin Campbell Black  
BY: SETH L. LEVINE, ESQ.  
MIRIAM L. ALINIKOFF, ESQ.  
SCOTT B. KLUGMAN, ESQ.

ALSO PRESENT: KATIE HOLBROOK  
AARATHI PARAMESH MENON  
Paralegal Specialists, USDOJ

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(Case called)

MS. SIPPERLY: Carol Sipperly for the government.

Good morning.

MR. KOENIG: Michael Koenig for the United States.

MS. ANDERSON: Alison Anderson, also for the United States.

MR. CIPOLLETTI: Mark Cipolletti for the United States.

MS. BROWN: Christina Brown for the United States.

MS. PARAMESH MENON: Aarathi Paramesh Menon.

MS. HOLBROOK: Katie Holbrook.

MS. SIPPERLY: Your Honor, if I could just introduce the end of the table. We asked our paralegals to come in case any exhibits were brought up today, so we apologize if it's a crowded table today.

THE COURT: Take as much room as you like.

MS. SIPPERLY: But we think that maybe exhibits won't come up.

THE COURT: They're not going to come up.

Mr. Breen.

MR. BREEN: Thank you, your Honor. Good morning. Ken Breen, Phara Guberman, and Jane Yoon for Matt Connolly.

MR. LEVINE: Good morning, Judge. Seth Levine, Miriam Alinikoff, and Scott Klugman for Mr. Black. By previous order, his appearance was excused today.

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1 THE COURT: Correct. Same with Mr. Connolly.

2 MR. BREEN: Yes. Thank you, your Honor.

3 THE COURT: Take a seat.

4 I have the following questions. How long does the  
5 government anticipate it will take to present its case in  
6 chief?

7 MS. SIPPERLY: Well, obviously it depends on --

8 THE COURT: Ms. Sipperly, how long will it take the  
9 government to present its case in chief?

10 MS. SIPPERLY: We expect, with the type of  
11 cross-examination, two weeks.

12 THE COURT: No, no. Please.

13 MS. SIPPERLY: Two weeks.

14 THE COURT: Two weeks. Thank you.

15 MS. SIPPERLY: And hopefully less.

16 THE COURT: I always hope for less.

17 Okay. Mr. Breen and Mr. Levine, just for my planning  
18 purposes, should I add one week or two weeks for a possible  
19 defense case?

20 MR. BREEN: One week, your Honor.

21 THE COURT: Okay. Okay. So here are my two proposals  
22 for you. One potential trial date is July 23rd, and one  
23 potential trial date is September 17. I had hoped for the  
24 preceding week, but unfortunately, the judicial conference of  
25 the United States is meeting that week, and that's the one

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1 thing I can't not show up for, in my exalted capacity as the  
2 district court representative to the judicial conference of the  
3 United States for the Second Circuit. So them's my options,  
4 folks. I'd rather do it in July, but I told you September in  
5 the opinion, so those are your two dates and there are no  
6 others. If we do it on September 17th, we'll pick a jury,  
7 we'll have to take a break for Yom Kippur, which is Wednesday.

8 MR. BREEN: Your Honor, given the Court's ruling and  
9 the government's shifting theories, we would ask for the  
10 September date.

11 THE COURT: Okay. That's it. Book it.

12 Breaking my heart, guys. I tried.

13 I would like to say that Roe Shalev, Ebony Ray, and  
14 Kelsey Russell have worked exceedingly hard on this case and  
15 that they will not be around for the trial is really deeply  
16 disappointing to them, and to me. Come back as guests.

17 Okay. We have a date.

18 404(b), *Jencks*, and *Giglio* by August 10th. We don't  
19 have any more motions. We've had our *in limine* motions. The  
20 date has long since passed for 404(b) motions, so there isn't  
21 going to be any 404(b). Why am I saying that? There is no  
22 404(b). We know that. That date passed. So *Jencks*, *Giglio*,  
23 3500, August 10th.

24 Now the other open item on the agenda is, will the  
25 government be preserving the testimony of Ms. Scutt?

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1 MS. SIPPERLY: Your Honor, so we are in the process of  
2 making that decision.

3 THE COURT: Oh, for the love of god.

4 MS. SIPPERLY: But we fully expect to have --

5 THE COURT: Make a decision, now. Make it now. Make  
6 it while we're sitting here. You've had ten days. What's the  
7 big deal? Make the decision. Honestly, Ms. Sipperly.

8 MS. SIPPERLY: Your Honor, if we were to say today,  
9 then we would say we're pursuing both theories, but we really  
10 are considering going with the theory, and it's our position  
11 that this theory has been since the outset of the case.

12 THE COURT: Yes, that's your position. It's not my  
13 position. It's not the defense position. I already said in a  
14 footnote -- I didn't put it in the text, but let me put it in  
15 the text -- your position is unworthy of the Department of  
16 Justice. It is unworthy of you, all right? So forget it,  
17 Ms. Sipperly. We're not going to have a fight about this.

18 MS. SIPPERLY: That's an unfair characterization.

19 THE COURT: You think so. I don't. And I'm the  
20 judge. And it's done. We're not having a discussion about  
21 this, okay? We're not having a discussion about this.  
22 Ms. Sipperly, I'm going to give you a deadline.

23 Ms. Sipperly. You have until the 29th of this month  
24 to make a decision, once and for all. You have until the 29th  
25 of this month, at 5 p.m. It had better be on ECF, because if

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1 it's not, then the answer is no.

2 MS. SIPPERLY: In the meantime, the government has  
3 submitted an MLAT with the Court's order and the witness is on  
4 notice, and to the extent there would be a Ewan deposition, the  
5 government informed defense counsel that that deposition would  
6 go by letters rogatory, after consulting with the Office of  
7 International Affairs. We were told that those are the  
8 mechanisms for the government and defense.

9 THE COURT: I'm looking at Mr. Breen and Mr. Levine.

10 MR. LEVINE: So your Honor, obviously we're going to  
11 have to wait to see what the decision of the government is  
12 pursuant to the Court's order. I will say, however, that  
13 should they proceed with Ms. Scutt, what the government has  
14 said -- and they told us the other day that they intend to use  
15 their MLAT abilities to get their witness. They will not --

16 THE COURT: They will use their MLAT abilities to get  
17 your witness. They will or they will not get Ms. Scutt.  
18 That's the end of that.

19 MR. LEVINE: Thank you, your Honor.

20 THE COURT: Possibly that will help them make a  
21 decision. No MLAT for Ewan, no Scutt.

22 That's the end of my agenda.

23 MS. ANDERSON: We just have a couple housekeeping  
24 items.

25 THE COURT: Yes, Ms. Anderson.

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1 MS. ANDERSON: The first is speedy trial. We just  
2 want to get that on the record, obviously, from now until  
3 September.

4 The other one is that it was raised in your order  
5 about the *Garrity* issue with Mr. Ricciardi, the expert witness,  
6 and we just want to make sure that --

7 THE COURT: I forgot about it.

8 How do you guys feel about that, Mr. Breen,  
9 Mr. Levine?

10 MS. ANDERSON: And he's likely to not be our very  
11 first witness.

12 THE COURT: It doesn't matter if he's your first  
13 witness or your 15th witness. The issue is the issue. It has  
14 nothing to do with where he gets called.

15 Mr. Breen? Mr. Levine?

16 MR. BREEN: We have no issue.

17 MR. LEVINE: I'm sorry, your Honor.

18 THE COURT: Would you rather another judge did the  
19 *Garrity* hearing with Mr. Ricciardi?

20 MR. LEVINE: Your Honor, that's an issue -- we've seen  
21 that in your order -- we're still analyzing. It's obviously  
22 something we'd like a little bit more time to think about.  
23 It's something we have to advise our client about, and this is  
24 not something we would suggest without a lot of thought.

25 THE COURT: So you have a lot of thought until the

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29th of May.

MR. LEVINE: That's fine, your Honor. Thank you very much.

THE COURT: Then you can make that decision, all right?

MR. LEVINE: Thank you very much.

THE COURT: I gather for Mr. Breen it's not an issue.

MR. BREEN: It's not an issue, your Honor.

THE COURT: Thank you. But if it is for Mr. Black, trust me, I will take no offense. I will take absolutely no offense if you want another judge to do that hearing. And then it can be done over the course of the summer.

MR. LEVINE: Your Honor, I understand that. It's simply a matter of the fact given the --

THE COURT: No, no. I think you need to talk to your client, Mr. Levine. You don't have to apologize for talking to your client, okay? You don't.

MR. LEVINE: Thank you very much.

THE COURT: I will say that I know him a lot less well than I know you at this point. Okay.

MS. ANDERSON: Your Honor, the one other issue that we wanted to raise was -- and I don't know if it just didn't hit the docket, but the Court's rulings on the matters under seal. The motions --

THE COURT: It's not that it didn't hit the docket;



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1 it's that I'm still negotiating with the taint team and defense  
2 counsel. I thought that the taint team had exposed some grand  
3 jury material and I went back to the taint team, and I think to  
4 defense counsel, with my suggestions.

5 You guys will get it today. I was concerned that  
6 perhaps some grand jury material had inadvertently been left  
7 exposed. That will be taken care of without any involvement  
8 from the folks at the front table.

9 MS. ANDERSON: And your Honor, I apologize. I'm  
10 actually more referring to the government's motions *in limine*  
11 under seal, so I know defendants' statements we can deal with  
12 at trial, but the other one, we just wanted to at least get a  
13 position on the record about sort of the personal issues of --

14 THE COURT: Oh.

15 MS. ANDERSON: And I think we've come to an agreement.  
16 I just wanted to get the agreement on the record.

17 THE COURT: We decided it.

18 MS. ANDERSON: So I don't know if we just didn't  
19 receive that or if we missed something. But we'll follow up.

20 THE COURT: I think you missed something. But we  
21 decided everything. It didn't sound like there was much of an  
22 issue to be decided. But since it's under seal, we're not  
23 going to worry about it.

24 MS. ANDERSON: Okay. Thank you.

25 THE COURT: Here. We'll get something out by the end

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1 of the day clarifying that, okay?

2 MS. ANDERSON: Okay. Thank you, your Honor.

3 THE COURT: Okay. Mr. Breen, how was your last trial?

4 MR. BREEN: Glad to be home, your Honor.

5 THE COURT: We're glad to see you. We're glad to have  
6 you here. So what might you have for the agenda?

7 MR. BREEN: I have nothing today, your Honor, that  
8 hasn't been covered already.

9 THE COURT: That hasn't been covered already. Great.  
10 Mr. Levine? A little hesitant always to call on  
11 Mr. Levine.

12 MR. LEVINE: Your Honor, you always hurt my feelings  
13 when I start. I have just one issue.

14 THE COURT: Okay.

15 MR. LEVINE: It has no subparts.

16 One thing, in going through the large amount of  
17 evidence here, that would be very helpful to the defense, and I  
18 think we're entitled to now, is a co-conspirator list. There  
19 are tapes, there are lots of things the government is  
20 suggesting they're going to offer --

21 THE COURT: I think that would be absolutely  
22 necessary. I want a co-conspirator list, and I want it sooner  
23 rather than later because I'm the one who has to make the  
24 rulings on whether things are admissible or not.

25 MR. LEVINE: Thank you, your Honor.

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MS. ANDERSON: And your Honor --

THE COURT: Ms. Anderson.

MS. ANDERSON: We would like to provide that to defense via a letter with --

THE COURT: That's fine. You can. Look, a letter as opposed to a what? The government always goes by letter. Never mind. I don't really care. Ms. Anderson, I don't care how you present it, as long as you do that. Thank you.

MS. ANDERSON: Thank you.

THE COURT: Thank you very much. I like the 29th of May. I think that's a good date. It's a good date for everything. Okay. Thanks for bringing that up, Mr. Levine, because I would just as soon know who's a co-conspirator and who's not for purposes of this case. There are hearsay issues.

MR. LEVINE: Thank you, your Honor.

THE COURT: All right. So Ms. Anderson brings up speedy trial. The defense has asked for a long date, so I assume that we are okay with speedy trial to the 17th of September?

MR. BREEN: That's correct, your Honor.

MR. LEVINE: Yes, your Honor.

THE COURT: Thank you. That's done.

All right. Anything else?

Have a lovely Memorial Day.

ALL COUNSEL: Thank you, your Honor.

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